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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,088	03/11/2004	Hiromi Hyuga	26A-016	4346
23400	7590	08/22/2005	EXAMINER	
POSZ LAW GROUP, PLC 12040 SOUTH LAKES DRIVE SUITE 101 RESTON, VA 20191			PAPE, JOSEPH	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,088

Applicant(s)

HYUGA, HIROMI

Examiner

Joseph D. Pape

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 2-10 and 12-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/11/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Figures 13-15 reply filed on 6/10/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 2-10 and 12-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/10/05.

Note that claims 12 and 13 were withdrawn by the Examiner because they read on non-elected figures. Specifically, claim 12 recites "step portions" and "bonding portions" which are only present in non-elected Figures 9-12 and claim 13 recites an "insertion hole" and a "tip side" which are features in Figure 17.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the last two lines, the phrase "when a load acts" is vague and indefinite because it fails to specify on what element of the invention the load acts to result in deformation.

In claim 11, line 5, the recitation that the first resin portion includes a through hole (53) is incorrect in that the second resin portion has this feature. On the last three lines, the resin portion which has a lower rigidity is not disposed between the grille main body and the first resin portion.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1, as understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Fuener et al.

Fuener et al. disclose the claimed invention including grille 28, attaching portion 50 and portion 58 to be deformed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 11, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Fuener et al.

Fuener et al. disclose the claimed invention including grille 28, attaching portion 40, 42 and portion 48 to be deformed. The attaching portion includes a first portion 42 and a second portion 40 with a through hole for a threaded fastener. The second portion is of a material of lower rigidity than the first portion.

Fuener et al. do not disclose that the specific materials for the first and second portions are resins.

Section 2144.07 of the MPEP sets forth that the selection of a known material based on its suitability for its intended use supported a prima facie obviousness. See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the attaching portions of Fuener et al. from resins with differing rigidities because such selection of a known material based upon its suitability for its intended use is prima facie obvious in view of *In re Leshin*, 227 F.2d 197, 125

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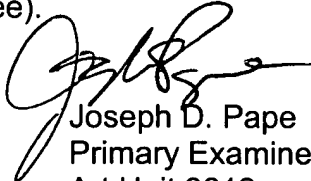
USPQ 416 (CCPA 1960) and in this instance no new or unexpected results occur from the use of such material.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other cited references show other energy absorbing grille arrangements that are similar to that of the current invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (571)272-6664. The examiner can normally be reached on Tuesday-Friday 6:30 AM-3:00 PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph D. Pape
Primary Examiner
Art Unit 3612
8/18/05

Jdp
August 18, 2005